



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2017-0204; FRL-9965-75-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
Pennsylvania; Revision to Allegheny County Regulations for Open Burning**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Pennsylvania state implementation plan (SIP). The revisions update Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning open burning. Pennsylvania submitted updated regulations, on behalf of Allegheny County, which clarify and codify existing regulations in order to more effectively address emissions from open burning and protect public health. EPA is approving the SIP submittal of Allegheny County's regulations for open burning in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-

0204 at <https://www.regulations.gov>, or via email to [stahl.cynthia@epa.gov](mailto:stahl.cynthia@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 25, 2015, the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection submitted a formal revision to the Pennsylvania SIP. The SIP revision consists of amended versions of Allegheny County Health Department’s (ACHD) regulations under Article XXI (Air Pollution Control), section 2101.20, “Definitions,” and section 2105.50,

“Open Burning.” Allegheny County does not currently meet the federal air quality standards for fine particulate matter under 2.5 microns in size (PM<sub>2.5</sub>), including the 2015 PM<sub>2.5</sub> national ambient air quality standard (NAAQS), as measured annually. Wood smoke contains air toxics and contributes to high levels of PM<sub>2.5</sub> in Allegheny County. The revised regulations clarify and codify existing regulations regarding open burning in order to more effectively address emissions due to the numerous pollutants, including air toxics, found in wood smoke. The revised ACHD regulations, effective January 1, 2015, specify the following details related to various aspects of open burning: 1) materials that may be burned; 2) the size of burn piles; 3) setback requirements; 4) use of chimineas, fire pits, and outdoor fireplaces; and 5) burning restrictions on air quality action days.

## **II. Summary of SIP Revision and EPA Analysis**

In the June 25, 2015 SIP submittal, Pennsylvania included revisions to Article XXI, sections 2101.20 and 2105.50 with a state effective date of January 1, 2015. The revision to section 2101.20 (Definitions) under Article XXI amends the definition of “open burning” to additionally include any fire or combustion that occurs in a chiminea, fire pit, outdoor fireplace or grill. The revisions to section 2105.50 (Open Burning) under Article XXI consist of the following: 1) limit any open burning to clean wood, propane, or natural gas, and establishes specific exceptions to the limits; 2) limit the volume of clean wood being burned and limiting the distance permitted between open burning locations and inhabited areas; 3) establish the exceptions to burning clean wood for chimineas, fire pits, outdoor fireplaces and grills. These exceptions pertain to the use of charcoal, propane, or natural gas when pertaining to cooking, the use of commercially available fire logs, paraffin logs and wood pellets, and the use of paper or commercial smokeless fire

starters to start an allowed fire.; 4) prohibit wood burning activities on air quality action days, with the exception of commercial food preparation; 5) allow ACHD to prohibit or reduce open burning based on severity, duration, topography, and meteorological conditions; 6) restrict open burning activities on air quality action days, with the exception of conducting such burning for the commercial preparation of food; and 7) make the necessary administrative word changes and paragraph renumbering in order to clarify and codify various regulatory and existing policies.

These SIP revisions further address emissions from open burning, which should reduce PM<sub>2.5</sub> pollution and assist Pennsylvania with the 2015 PM<sub>2.5</sub> NAAQS. These revised regulations limit the times and fuel types permitted for open burning which should reduce pollutants emitted during open burning including PM<sub>2.5</sub>. The revised provisions are expected to reduce PM<sub>2.5</sub> emissions throughout Allegheny County. EPA finds that the submittal strengthens the Commonwealth of Pennsylvania SIP and is in accordance with section 110 of the CAA.

Therefore, approving these regulation revisions will not interfere with attainment of the NAAQS, rate of progress, reasonable further progress, or any other applicable requirement of the CAA.

For additional analysis, see EPA's Technical Support Document available in the docket for this rulemaking and online at [www.regulations.gov](http://www.regulations.gov).

### **III. Final Action**

EPA is approving the Pennsylvania June 2015 SIP submittal which contained revised provisions of ACHD's Article XXI (Air Pollution Control), section 2101.20, "Definitions," and section 2105.50, "Open Burning" as the revisions meet requirements in CAA section 110. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of

today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 90 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of section 2101.20 and section 2105.50 under Article XXI (Air Pollution Control). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.<sup>1</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information ).

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

## **V. Statutory and Executive Order Reviews**

### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 90 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, which approves revisions to section 2101.20 and section 2105.50 under Article XXI (Air Pollution Control), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 24, 2017.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart NN--Pennsylvania**

2. In §52.2020, the table in paragraph (c)(2) is amended by:

- a. Adding an entry for “2101.20” in numerical order under “Part A—General”.
- b. Revising the entry for “2105.50”.

The addition and revision read as follows:

**§52.2020 Identification of plan.**

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(c) \* \* \*

(2) \*\*\*

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ §52.2063 citation
<b>Part A—General</b>				
* * * * *				
2101.20	Definitions	01/01/15	[insert date of publication in the Federal Register], [insert Federal Register citation]	Revised existing definition of “Open burning.” All remaining definitions are unchanged as approved on June 24, 2015 (80 FR 36239).
* * * * *				
<b>Subpart 5—Open Burning and Abrasive Blasting Sources</b>				
2105.50	Open Burning	01/01/15	[insert date of publication in the Federal Register],	Adding 2105.50(a)(1) subparagraphs A through C.

			<b>[insert Federal Register citation]</b>	Revising 2105.50(a)(3) and recodifying as 2105.50(a)(5)  Adding 2105.50(a)(4)  Revising 2105.50(e) to replace “Enforcement” with “Coal Refuse Piles”  Revising 2105.50(f) to replace “Permits” with “Enforcement” and recodifying “Permits” as 2105.50(d)  Revising 2105.50(d) by removing previous language in 2105.50(d)(1)(E) and recodifying to replace with language in 2105.50(d)(1)(F). Recodifying 2105.50(d)(1)(F) to replace with language in 2105.50(d)(1)(G). Removing 2105.50(d)(1)(G).  Adding 2105.50(d)(6)  Prior Approval - 6/24/2015, 80 FR 36239		
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[FR Doc. 2017-16806 Filed: 8/9/2017 8:45 am; Publication Date: 8/10/2017]